to C, A is estopped from subsequently asserting his title to C's damage.[1] The principal case seems indistinguishable. Both cases agree in imposing a duty to give notice, a duty to speak the truth.

Whence arises this duty and what are its limits? In the absence of privity the law hesitates to impose upon a man a duty to act, and in these cases we have no privity. At first sight the obligation seems based upon a duty, purely moral, to save another from harm. Yet, clearly, if one hears casually that a note to which his signature has been forged is being sold to a stranger, he will not suffer any liability through a failure to warn the stranger.[2] The moral obligation to speak does not become a legal one when silence will merely mean that another is not helped, but only when another, who is rightfully relying on the representation, will be injured by such silence. Where A knows that B, in a matter in which both are interested is acting or going to act in the ordinary course of affairs with reference to his, A's, conduct, and in the reasonable belief that that conduct represents the truth, then A should take care that his conduct does represent the truth. If he allows his conduct to represent a falsehood, and B relying thereon, changes his position, then A will not be allowed subsequently to set up what is true to B's damage. To permit A to do so would be to sanction a fraud. Therefore the courts decide in such a case that if a party wishes to preserve to himself a right at some later day to set up the truth, there is a present obligation upon him to act truthfully.[3]

In the principal case the conduct which the plaintiff had a reasonable right to expect from the defendant, both being business men, was conduct in accordance with business custom. The business custom in these cases is to reply in due course of post. A rule, therefore, requiring a telegram hardly seems supportable. But with that exception, the decision seems a salutary one. The growth in the size and intricacy of business enterprises makes it increasingly necessary to place confidence in the conduct of strangers. And within the narrow limits of the rule laid down, it seems well to strictly enforce truthfulness of conduct by way of estoppel.

RECOVERY UNDER THE CODE ON CONTRACTS FOR THE BENEFIT OF THIRD PERSONS. — A recent article makes the assertion that the code provision allowing the real party in interest to sue, settles conclusively the question of recovery by the beneficiary under a contract made between other parties for his benefit. *Suits on Contracts for the Benefit of Third Persons*, M. E. E. Kerr, 66 Alb. L. J. 312. The statement, moreover, is one that is frequently met.[1] That it in fact has not had this effect is shown by the state of the law on this subject in code states. When recovery has been allowed, it has frequently in code states, as in others, been based wholly on the general law and not at all on the code provision.[2] In some code states, however, the decisions have been put on the latter ground.[3] The reason

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[1] Wendell *v.* Van Rensselaer, 1 Johns. Ch. (N.Y.) 344; Osborn *v.* Elder, 65 Ga. 360.
[2] See Bigelow, Estoppel, 5th ed., 596 et seq.
[3] See Blackburn, J., in Swan *v.* North British Australasian Co., 2 H. & C. 175, 182; see Cababé, Estoppel, Appendix.

[1] 7 Am. & Eng. Enc. 109; 15 Enc. Pl. & Pr. 717.
[2] Emmitt *v.* Brophy, 42 Oh. St. 82; Larson *v.* Cook, 85 Wis. 564.
[3] Rice *v.* Savery, 22 Ia. 470; Ellis *v.* Harrison, 104 Mo. 270.

this view is not the prevailing one is apparent when we consider the difficulty met with in construing the word "interest." If it is used in its popular sense, the provision leads logically to conclusions which even the courts so using it feel themselves bound to disapprove. For since an accidental beneficiary may in this sense be quite as deeply interested in the performance of a contract as an intended beneficiary, this construction, if followed, must inevitably result in giving a right of action to persons whose benefit under the contract, though material, was neither contemplated nor desired by the contractors. This is of course not the law.[4] That the courts do not consistently follow the popular construction is further shown by the fact that even in code states there are instances where a sole beneficiary has not been allowed to sue,[5] and that in New York the creditor cannot sue a firm on its obligation to pay the liabilities of an outgoing partner.[6] In all these cases, the plaintiff has an interest in the popular sense, yet recovery is denied.

The other and perhaps the preferable view is that the word "interest" in the code is used in a legal sense. But if this is so, it cannot be said that any person has an interest, whose rights are recognized neither in law nor in equity.[7] In this view the result of the enactment is merely to "abolish so far as can be done the distinction between rights at law and in equity," [8] leaving it still to be decided whether a plaintiff aside from the code has any right equitable or legal. "No new right of action is created." [9] In the case of a sole beneficiary, it may be that an equitable right exists, founded on the fact that the promisee has no adequate remedy, and that both parties intended the beneficiary to have an enforceable right under the contract.[10] If such a right should be granted by the courts of equity, the code would have the effect of changing it to a legal one. Aside from this consideration, which is at least doubtful, it is probable that the code provision has properly no effect on the enforcement of contracts for the benefit of a third person.

THE LIMITS OF ABSOLUTE PRIVILEGE ATTACHING TO LEGISLATIVE AND JUDICIAL REPORTS. — Broadly speaking, a defamatory statement honestly made in protecting an interest or performing a duty is privileged.[1] Whenever the occasion is such that the public good demands unfettered speech, the private right to reputation must yield. In most cases the privilege is qualified; if it is abused it is forfeited. But there is a class of cases where absolute immunity prevails. In this class are legislative and judicial proceedings, and, by statutes, official reports of such proceedings. How far does the privilege given to such documents extend? Does the imprimatur of the government attach immunity to the document itself and carry its protection to whatever use it may be put? The Court of Appeals of the Dis-

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[4] Wainwright *v.* Queens County Water Co., 78 Hun (N. Y.) 146; Chung Kee *v.* Davidson, 73 Cal. 522; Davis *v.* Clinton, etc., Co., 54 Ia. 59.

[5] Townsend *v.* Rackham, 143 N. Y. 516; Jefferson *v.* Asch, 53 Minn. 446; Vrooman *v.* Turner, 69 N. Y. 516.

[6] Wheat *v.* Rice, 97 N. Y. 296.

[7] *Cf.* 15 HARV. L. REV. 778.

[8] Bliss, Code Pleading, 2d ed., § 47.

[9] Harris, J., in Hodgman *v.* Western R. R. Co., 7 How. Pr. (N. Y.) 492.

[10] This seems a possible explanation for Moore *v.* Darton, 4 De G. & S. 517.

[1] Harrison *v.* Bush, 5 E. & B. 344.